The book will prove to be of value to the practical man and also to the philosophical student of New England town law. The author states both sides of questions that are disputed, leaving the person using the book to come to his own conclusion. This is in accord with the prevalent view that it is no part of the duty of a writer on law topics to point out what he thinks the law should be. There is room, however, for a difference of opinion on this subject.

A. M. E.

THE ELEMENTS OF JURISPRUDENCE. By Thomas Erskine Holland. Tenth Edition. Oxford University Press: New York and London. 1906. pp. xxv, 443.

The two preceding editions of this classical treatise have already been reviewed in the HARVARD LAW REVIEW, and little need be added as to the general excellence of the treatise. We may say that Professor Holland's general analysis of the law is rather dictated by historical accidents of growth in the English law than by fundamental legal principle; that his chief division into public and private law is neither required by theory nor useful in practice, being in substance a division between all normal and most abnormal law, on the one hand, and a single branch of abnormal law on the other; and that his use of foreign law for comparison is not of the underlying principles of such law, but of the definitions of speculative writers. But with all said which can fairly be said in criticism of the work, it is easily the clearest, the soundest, and the best of all works on jurisprudence in the English language; and that lawyers and students of law appreciate it as such is shown by its rapidly issued new editions.

In this edition not much has been added to the discussions in the text, but many recent cases have been added to the notes. Important and fundamental questions have been at issue since the last edition. The right to one's livelihood, as threatened by trade combinations (Allen *v.* Flood and Quinn *v.* Leatham) is rather non-committally discussed (p. 180); the quasi-corporate trades union (Taff Vale Ry. *v.* Amalgamated Society) is noticed (p. 333); the tendency of Cape Colony to break away from the strict Roman-Dutch law as to "cause" or consideration for a contract is stated (p. 275). This phenomenon might be recognized as common where the common law and the civil law come into juxtaposition, as in Louisiana and Quebec.

On one point the reviewer wishes to make his protest. Professor Holland mentions the common law as a species of customary law (p. 51). This it seems not to be. The common law took its origin almost, one might say, at a single historical moment — when Henry II, having actually gained general jurisdiction for his judges, instructed them in exercising this new jurisdiction, to apply as law a system of justice which should be based not only upon the general principles of the customary law, but also on equity and justice. The common law from its inception has been based upon principles, not upon custom. It is to be compared in its nature not with the ordinary Germanic folk-law, but to the law administered in the middle ages by the Royal Court of Bohemia, described in Sigel's Slavic Law, pp. 72–83. "We remark only in England and Bohemia," that author writes (though he might perhaps have added to the number of examples), "an eager study of legal precedents and the application of scientific methods, worked out by the glossators and commentators, to home law practice." Customary law, properly so called, is of historic interest, but is hardly a fit field for legal science.

J. H. B.

LIMITATIONS OF THE TAXING POWER. By James M. Gray. San Francisco: Bancroft-Whitney Co. 1906. pp. lx, 1316.

The scope of this book is indicated fully by its secondary title: "A Treatise upon the Constitutional Law governing Taxation and the Incurrence of Public Debt in the United States, in the Several States, and in the Territories." The treatment is full and minute; and, as is necessary in dealing exhaustively with a

narrow and specialized subject, the needs of the student are subordinated to the needs of the practitioner. The plan and the execution are well adapted to the purpose in view. Constitutions, the necessary subject matter of the discussion, are adequately quoted. The citation of decisions is not intended to be exhaustive, as the foot-notes sometimes point out; but the citations are certainly numerous enough, covering no less than five thousand cases. The text does not present to an undue extent extracts from opinions, but states without much discussion the effect of the decisions. The result is a book of value to persons interested in the specialty of taxation; and even the reader who cares not at all for this specialty must find interest in the chapters on state taxation in interference with commerce, state taxation impairing contracts, and due process of law. The opening chapter on equality as "The Fundamental Thought in the Constitutional Law of Taxation" gives an unnecessarily unfavorable impression of the author's soundness; for throughout a number of pages it tends to indicate a belief that there is some unwritten constitutional higher law requiring equality, whereas the author in quite orthodox fashion believes, and ultimately expounds, that there is no such unwritten requirement, but that equality is obviously just and desirable, and that consequently constitutions and statutes must be so construed as to attain equality, if such construction be possible. E. W.

PRINCIPLES OF THE ENGLISH LAW OF CONTRACT AND OF AGENCY IN ITS RELATION TO CONTRACT. By William R. Anson. Eleventh English Edition. Second American Copyright Edition. By Ernest W. Huffcut. London and New York: Oxford University Press. 1906. pp. li, 462. 8vo.

The new edition of this popular book, as it appears after a lapse of eleven years since the previous edition, does not differ strikingly from its predecessor. The merit of the book consists rather in the clear statements of fundamental principles than in a large collection of authorities or a development of all the applications of these principles. The book seems still the best treatise of its size on the subject, but in a few matters the treatment is unsatisfactory, which is the more important because it has influenced American text writers and students. We may mention especially the treatment of mistake and similar matters, under the head of "Reality of Consent." The distinction, highly important in our law, between mistake which prevents mutual assent at law, and mistake which affords equitable ground for rescission of a contract good at law, is wholly confused. Again, the treatment of the topic of performance of contract under the head of "Discharge of Contract," is unfortunate. The notion that a contract when broken is discharged, and the obligation of a right of action substituted, is distinctly overworked, and the distinction between the plaintiff's only available remedy and his right thereby confused.

The notes of Dean Huffcut, if the limitations of space are considered, are to be commended. The American cases seem well selected, and the comments, though necessarily brief, are frequently suggestive. S. W.

THE LAW OF PASSENGER AND FREIGHT ELEVATORS. By J A. Webb. Second and Revised Edition. St. Louis: The F. H. Thomas Law Book Co. 1905. pp. xviii, 375. 8vo.

Doubtless such a special book as this has its value to the practitioner who has to deal with a case which falls within its scope. It will save him many days of searching to have the cases bearing upon the subject collected and collated. There is little scope for generalization in making such a book. Negligence in the operation of elevators should be judged by the same standard as in other matters, — due care under the circumstances. The author, however, follows many courts in considering elevators as common carriers. This can hardly be; it is enough to say on that point that service could be refused in any particular case. *Seaver* v. *Bradley*, 179 Mass. 329.